



Tuesday, 13 November 2007

Takeovers Panel publishes revised Guidance Note on Lock-up devices

The Takeovers Panel announced today that it has published a revised version of its Guidance Note on Lock-up devices.

Guidance Note 7 sets out the Panel's approach to arrangements entered into by a target entity, including devices such as break fees, asset lock-ups, no-talk agreements and no-shop agreements. It explains the two guiding criteria, concerning competition and coercion that the Panel applies when considering whether such arrangements give rise to unacceptable circumstances.

The Panel advised that it has not published the Guidance Note in a draft form for comment as it considers that the changes that it has made are not substantive and involve no change of policy. Rather the changes are part of the Panel's continued monitoring of the evolution of, and the Panel's own experiences with, lock-up arrangements. The types of changes which the Panel has made include:

- adjusting the focus of the guidance note from singular devices to lock-up arrangements generally. The Panel considers that this is reflective of current market practice towards the use of multiple devices, and the Panel's concern with the overall effect of lock-up arrangements.
- guidance on agreements affecting dealings with rival bidders, including 'no due diligence' agreements and agreements to pass on information. In summary, the Panel considers that, similar to no talk provisions, such agreements require appropriate safeguards and fiduciary exceptions.
- adding recent matters as examples of the policy issues discussed. In particular, the policy incorporates references to the recent panel decisions in *Magna Pacific Holdings Limited 02* [2007] ATP 03 and *Queensland Cotton Holdings Limited 02* [2007] ATP 05. Accordingly, the policy reflects that the Panel would be likely to find a no-talk agreement to be anti-competitive if the form of any fiduciary exception meant that it was likely to be unavailable to target directors in practical terms.
- clarification of policy application. The revised policy clearly states that the principles will be applied to any arrangement which has the effect of fettering the actions of a target, a bidder or a substantial shareholder.

While it has not published the document as a draft, the Panel advised that it would, as always, be interested to receive comments on the revised version of Guidance Note 7.

A copy of the revised Guidance Note is available on the Panel's website: [Guidance](#).

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